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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,606	04/22/2004	Jeffrey M. Simpson	2S14.1-031	6850
23506 7590 04/01/2008 GARDNER GROFF GREENWALD & VILLANUEVA, PC 2018 POWERS FERRY ROAD SUITE 800 ATLANTA, GA 30339				
EXAMINER				
NGUYEN, SON T				
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3643				
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04/01/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/829,606

**Applicant(s)**

SIMPSON ET AL.

**Examiner**

Son T. Nguyen

**Art Unit**

3643

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 11-17, 23 and 24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-8, 11-17, 23 and 24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 11,24** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 11, the phrase "the releasable connection" lacks prior antecedent basis.

For claim 24, the phrase "the catch pan" lacks prior antecedent basis.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

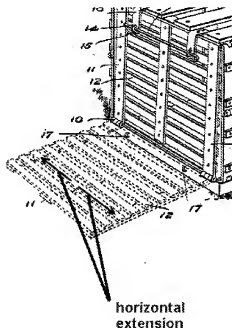
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 12-14** are rejected under 35 U.S.C. 102(b) as being anticipated by Schichtl (627535).

For claim 12, Schichtl teaches an enclosure for housing a pet litter pan in an interior portion thereof, said enclosure comprising an openable panel 11 having an interior face (upper face of ref. 11 where members 12 are mounted thereon), and an exterior face (face opposite upper face) and being pivotal between a closed position and an open position (see fig. 1), and further comprising at least two rails 12 extending

Art Unit: 3643

above and along the interior face of the openable panel, each of said rails being aligned in a direction (horizontal direction, see illustration below) extending outwardly from the interior portion when the openable panel is in its open position for sliding said litter pan thereon during insertion and removal of the litter pan to and from the interior portion.



For claim 13, Schichtl further teaches wherein said openable panel is pivotally mounted along a bottom edge (at ref. 10) thereof.

For claim 14, Schichtl further teaches a releasable latch 13-16 along a top edge thereof.

5. **Claims 12,13,15,16,23** are rejected under 35 U.S.C. 102(b) as being anticipated by Soderquist (1671051).

For claim 12, Soderquist teaches an enclosure for housing a pet litter pan in an interior portion thereof, said enclosure comprising an openable panel C having an

interior face (upper face of ref. C in fig. 4), and an exterior face (face opposite upper face) and being pivotal between a closed position and an open position (see fig. 4), and further comprising at least two rails 20,21 extending above and along the interior face of the openable panel, each of said rails being aligned in a direction extending outwardly from the interior portion when the openable panel is in its open position for sliding said litter pan thereon during insertion and removal of the litter pan to and from the interior portion.

For claim 13, Soderquist further teaches wherein said openable panel is pivotally mounted along a bottom edge (at ref. 15) thereof.

For claim 15, Soderquist further teaches wherein said openable panel comprises an opening 35 for allowing a pet to enter and exit the enclosure.

For claim 16, Soderquist further teaches a top panel E having first and second side edges and a rear edge, each of the first and second side edges and rear edge comprising at least one ferrule 22,23,25, said enclosure further comprising first and second side panels B and a rear panel D, each of said first and second side panels and said rear panel comprising pins 12 for engagement within said ferrules of the top panel to secure the side and rear panels to the top panel.

For claim 23, Soderquist teaches an enclosure for a pet litter pan comprising a pivotally opening panel C having a releasable connection (at refs. 25,26,24,29) at a top edge thereof and a hinged attachment 15 at a bottom edge thereof whereby the top edge of the pivotally opening panel can be lowered outwardly for accessing an interior portion of the enclosure, said pivotally opening panel comprising at least two raised rails

20,21 extending along an interior face thereof for sliding a litter pan thereon during insertion and removal of the litter pan from the enclosure, each of said raised rails extending from a first end proximal the bottom edge of the pivotally opening panel to a second end proximal the top edge of the pivotally opening panel (see fig. 4).

6. **Claim 24** is rejected under 35 U.S.C. 102(b) as being anticipated by Ho (5452681).

Ho teaches an enclosure for a pet litter pan, the enclosure comprising a plurality of generally flat panels 4 assembled together, wherein the panels are attached to one another at their corners by connector feet 3 for engaging adjacent panels; and further comprising a removable catch tray 2 having notched corners 20 for receiving and engaging said connector feet when the enclosure is placed over the catch pan to prevent the catch pan from moving out from beneath the enclosure.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-3,5-7,11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Soderquist (as above) in view of Sato (JP10323139A).

For claim 1, Soderquist teaches an enclosure for a pet litter pan comprising: a substantially rigid frame comprising a top panel E, first and second side panels B, a front panel C and a back panel D, forming an enclosure bounding an interior space for

Art Unit: 3643

receiving a litter pan; wherein the front panel defines an access opening 35 through the frame for permitting pet access to the interior space, and further comprising a hinged coupling 15 adjacent a bottom edge of the front panel whereby the front panel can be pivotally opened to expose an interior face of the front panel; and further comprising a pair of rails 20,21 extending above the interior face of the front panel, each rail having a first end (end closer to ref. 15) adjacent the bottom edge of the front panel and a second end (end closer to ref. 21 in fig. 4) adjacent a top edge of the front panel. However, Soderquist lacks a moisture-resistant plastic stranded material applied onto said frame.

Sato teaches a cover applied onto an animal cage which is made out of a moisture-resistant plastic stranded material (see translation provided). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cover made out of moisture-resistant plastic stranded material as taught by Sato on the frame of the enclosure of Soderquist in order to provide a more quiet environment with little temperature variation and to remove bad odor within the enclosure.

For claim 2, Soderquist as modified by Sato (emphasis on Soderquist) further teaches wherein the top panel, the first and second side panels, the front panel and the back panel comprise generally flat panels assembled together. See fig. 4, self explanatory.

For claim 3, Soderquist as modified by Sato (emphasis on Soderquist) further teaches wherein the generally flat panels are rectangular and assembled in a box-like structure. See fig. 4, self explanatory.

For claim 5, Soderquist as modified by Sato (emphasis on Soderquist) further teaches wherein the panels are attached to one another by at least one pin 12 and ferrule coupling 24-26,29.

For claim 6, Soderquist as modified by Sato (emphasis on Soderquist) further teaches wherein the panels are attached to one another by at least one connector foot 24-26,29,18. However, Soderquist as modified by Sato is silent about the connector foot being a resilient block for supporting the enclosure on a floor and for engaging cooperating posts of the panels. It would have been an obvious substitution of functional equivalent to substitute the connector foot of Soderquist as modified by Sato with a resilient block, since a simple substitution of one known element for another would obtain predictable results. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 7, Soderquist as modified by Sato (emphasis on Soderquist) further teaches a catch tray A for resting a litter pan thereon. Note that a tray can be shallow, thus, tray A can, somewhat, be considered as the catch tray.

For claim 11, Soderquist as modified by Sato (emphasis on Soderquist) further teaches wherein the releasable connection comprises a latch 28,30 mounted on an interior face of the enclosure for locking the front panel in a closed position

9. **Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over Soderquist as modified by Sato as applied to claims 1-2 above, and further in view of Schichtl (as above).

Soderquist as modified by Sato is silent about wherein the box-like structure has an open bottom.

In addition to the above, Schichtl's enclosure has an open bottom 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bottom of enclosure of Soderquist as modified by Sato be opened as further taught by Schichtl in order to provide ventilation and to allow waste to fall out on a support surface such as the ground and not accumulate in the enclosure.

10. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Soderquist as modified by Sato as applied to claims 1-2,6 above, and further in view of Ho (as above).

Soderquist as modified by Sato is silent about the tray A being a removable catch tray having at least one notched corner for engagement with one of said at least one connector foot.

As mentioned in the above, Ho teaches a removable catch tray 2 having at least one notched corner 20 for engagement with one of at least one connector foot 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable catch tray with notched corners as taught by Ho in place of the tray A in the enclosure of Soderquist as modified by Sato (emphasis on Soderquist) in order to allow easier collapsibility of the enclosure. Note that the connector foot is not positively recited, hence, as long as the tray has notched corner, the corner can perform the function of "for engagement" with the connector foot.

11. **Claim 17** is rejected under 35 U.S.C. 103(a) as being unpatentable over Soderquist (as above).

Soderquist teaches pins 12 but lacks wherein said pins comprise hooks with free ends pointed toward the rear panel, and wherein the rear panel extends across substantially the entire width of the enclosure, whereby when assembled, the first and second side panels are held captive against the rear panel. It would have been an obvious substitution of functional equivalent to substitute pins of Soderquist with pins with hooks, since a simple substitution of one known element for another would obtain predictable results. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

#### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1-8, 11-17, 23 have been considered but are moot in view of the new ground(s) of rejection. Pertinent arguments pertaining to Schichtl and Ho will be addressed.

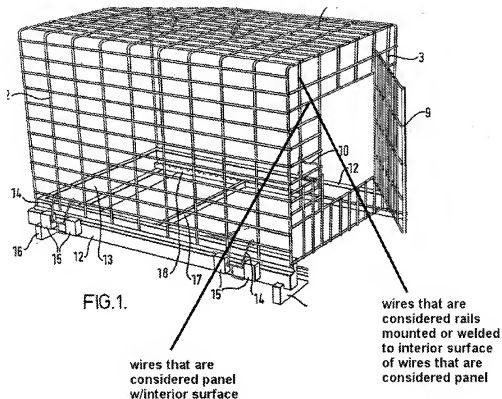
**Applicant argued that the Examiner has applied the "cross strips" 12 of the Schichtl reference to the Applicant claimed "rails". Schichtl's cross strips, however, form the end panel itself and are therefore not raised above the interior face of the panel. Also, Schichtl's cross strips extend crosswise, rather than outwardly from the enclosure.**

As explained in the above rejection, cross strips 12 is mounted on the interior surface of member 11. The end panel itself is considered to be the three members 11.

In addition, as shown in the illustration above under Schichtl's rejection, the strips 12 do extend horizontally outward from the enclosure.

**Applicant argued that the screen elements of the open mesh walls 4 disclosed by the Ho reference form the walls themselves, and are not raised above the interior face of the panel. Moreover, Ho's open mesh walls 4 are not hingedly or pivotally openable (rather, Ho's door 41 is openable within the fixed front wall.**

Ho is now only employed for claim 24, which does not claim pivoting panels or rails. However, in response to the rails comment, the screen of Ho are made out of wires criss-crossing each other or one wire on top of another wire, to which the bottom wires are considered the panel and the top wire are considered the rails mounted on an interior surface of the bottom wires or panel. For example of the wire concept, see fig. 1 of Watling, which is reproduce below to provide the Examiner's interpretation of rails. This illustrates the same wire mesh as in Ho.



### Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/  
Primary Examiner, Art Unit 3643